

Approved: March 13, 2014

Posted: March 19, 2014



Town Council Meeting Minutes

Tuesday, February 18, 2014, at 6:30 PM, in the Matthew Thornton Room

Vice Chairman Yakuboff called the meeting of the Town Council and the Public Hearing on the Proposed Municipal 2014-2015 Operating Budget and Warrant Articles **recessed from Thursday, February 13, 2014 back to order at 6:30 p.m.** Present at the meeting were Councilor Boyd, Councilor Dwyer, Councilor Harrington, Councilor Koenig, Councilor Mahon, Town Manager Eileen Cabanel, and Finance Director Paul Micali. Chairman Rothhaus was excused.

Pledge of Allegiance

Councilor Boyd led in the Pledge of Allegiance.

Announcements

Regular meetings of the Town Council will be conducted on Thursday, February 27, 2014 and March 13, 2014 at 7:00 p.m. in the Matthew Thornton Room. The first deliberative session for the Annual Town Meeting will be conducted on Wednesday, March 12, 2014 at 7:00 p.m. in the James Mastricola Upper Elementary School All-purpose room. The annual voting day is April 8, 2014 from 7:00 a.m. - 7:00 p.m. at the James Mastricola Upper Elementary School.

The 22nd Winter Carnival at Wasserman Park is scheduled for Saturday, February 22nd from 12:00 - 3:00 p.m. Enjoy a day of free family activities including snowman building, snow art, Ice Fishing Derby sponsored by the Merrimack Lions Club, Snowmobile rides sponsored by Sno-Buds of Merrimack, and lots of outdoor winter fun. Local businesses, community groups, committees and organizations interested in taking part in this event may contact the Parks and Recreation Department for a registration form by calling 882-1046.

The Merrimack Police Department will be sporting facial hair for the month of February as they participate in "Donate to Insulate" a fundraiser for the Special Olympics. The Merrimack Police has a YouTube channel where Officer Kelleher will be posting safety and community messages on a monthly basis. The Merrimack Police want to thank the residents and businesses in Merrimack for all of their hard work in helping us become the 19th safest community in the nation. This is a joint effort by all, and we could not have done it without your help.

Comments from the Press and Public - None

Recognitions, Resignations and Retirements - None

Appointments

1. Annual Review with the Heritage Commission

Submitted by Heritage Commission Chair Anita Creager

Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review with the Heritage Commission. This agenda item is to highlight the commission's significant actions, current projects, anticipated actions, and to raise any concerns the Council should know or could act on.

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Vice Chairman Yakuboff informed the Council and viewing audience Ms. Creager was unable to attend due to inclement weather. The item will be addressed at a later date.

Public Hearing

1. Public Hearing – Proposed Municipal 2014-15 Operating Budget and Warrant Articles

Submitted by Town Manager Eileen Cabanel and Finance Director Paul T. Micali

The Town Council will hold a public hearing, pursuant to NH RSA 33:8-a (I), NH RSA 32:5, I, NH RSA 21:35, NH RSA 40:13 II-b (a) and the Town of Merrimack Charter Article 8-3, to discuss the following:

- 2014/15 Proposed Municipal Operating Budget
- Collective Bargaining Agreement(s), if any
- Proposed Issuance of Debt
 - Highway Garage \$3,300,000
- Proposed New Capital Reserve Fund
 - Geographic Information System
- Petitioned Bonds, if any
- Other Petitioned Warrant Articles, if any
- Review of Default Budget

Vice Chairman Yakuboff opened the Public Hearing at 6:35 p.m.

Director Micali spoke of having been requested to obtain proposals for replacement of the Library roof. He informed the Council a walkthrough of the Library was conducted with several vendors after which he was contacted by Scott Livernois of Garland Company expressing a desire to meet. A meeting was arranged, during which Mr. Livernois explained the real problem with the roof. There are two spots that are weak where the water saturation was. He believes the major problem to be around the skylights; cracked mortar and brick. His recommendation is to put a metal surround in that area, metal roofing on the back side, re-shingle 3 rows of slate roof; take off and put rubber/membrane roofing in before placing back down, re-slope all flashing, rebuild drains, re-do the exterior envelope flashing, and seal the bricks near the dog-shed at the front of the building. It is his belief, if this work is done, he can guarantee at least ten years' useful life with the roof, replace the two wet spots, and put a seal over everything. There are other roofs out there he is looking at, which would provide additional useful life. It is his opinion the roof has another 12-15 years of useful life.

Director Micali remarked there are actually two roofs on the building; an old tar and gravel roof above which is a membrane roof. Mr. Livernois has stated he finds it difficult to believe water is seeping in between the membrane roof and then through the tar roof. It is his belief the \$53,000 budgeted amount is more than adequate to address the identified issues. Director Micali noted the School Department just opened up their roofing projects and received great pricing from the Garland Company, which provides him confidence utilizing this company is the right direction to move in. After learning it was not the roof that was the issue, the bidding process was cancelled.

2014/15 Proposed Municipal Operating Budget

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Town Manager Cabanel provided a PowerPoint presentation (copy attached). The Summary page provides a comparison between FY14 approved and FY15 proposed budgets. The slight increase to the proposed allocation to the Capital Reserve Fund represents the desired goal of increasing the amount deposited in the fund to address costs of projects identified in the Capital Improvement Program (CIP). Other Capital Expenditures represent one-time expenditures and those items identified as a need, e.g., police cruisers and the pump station area at the Public Works facility. Road Resurfacing Expenditures has increased and represents planned road paving projects.

Monies identified under Capital Reserve Fund Expenditures account for why the proposed budget appears to have increased by a greater amount than it truly has. The sub-total of appropriations is identified as \$29,007,126 in FY14 versus \$31,979,257 in FY15. The greatest difference is capital reserve fund expenditures (identified in green). It is important to understand each of these lines has a corresponding revenue line in the exact same amount. Capital Reserve Funds are established and funded over time to cover the costs of capital expenditures. For budgeting purposes, the expenditure has to be identified as well as the revenue transferred into the budget from the Capital Reserve Fund to cover the cost. One of the largest capital projects for FY15 is in the neighborhood of \$800,000+ for sewer line extension.

The Self-Supporting Funds are wastewater funds, special duty funds for the Police Department, Parks & Recreation Summer Camp program, etc. There again those line expenditure items have corresponding revenue line items. The amount to be raised in FY14 was \$15,484,648, and proposed in FY15 is \$16,131,875. The amount to be raised by taxes is divided by the total value of the Town (\$2,929,837,000 in FY 14 and \$2,937,337,000 in FY15). That results in an estimated tax rate of \$5.49, which represents a \$.20 increase. Ten cents of that increase is related to operating expenses, e.g., costs associated with Collective Bargaining Agreements, etc., and the remaining \$.10 to additional capital expenses.

Items unique to the proposed FY15 budget were listed as the addition of part-time IT person (20/hr. wk.) (\$26,318), increase in Capital Outlay (\$126,500), no raises for staff (outside of step raises), increase in paving (\$100,000), increase in Capital Reserve Fund deposits (\$93,000); and increase in Town wide valuation of \$7.5 million (new commercial and industrial construction).

Town Manager Cabanel stressed capital reserve funds are established as a way to save money over time to allow for the purchase of capital items through cash (savings) as opposed to bonding, etc. As a result, appropriations (expenditures) listed for capital items for which capital reserve funds were established, also have an offsetting revenue line for the exact same amount. This simply identifies the monies coming out of the Capital Reserve Fund (savings) and into the General Fund as well as the monies going out of the General Fund to cover the cost of the capital expense. If the recommendation were made not to identify the capital expense/allocation within the budget, the corresponding revenue line would also need to be removed.

Another slide identified proposed capital purchases for FY15. The greatest cost is associated with bridge replacement. Replacement of the McGaw Bridge alone has an associated cost of \$1,405,000. Because of the requirement to gross appropriate, the entire cost has to be identified within the budget. The Town's share of the cost of that bridge replacement is 20%. Another large item is the sewer line extension at a cost of \$868,000. That project also entails drainage improvements, water lines, and road paving. Total cost of that project is just over \$1.1 million.

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Director Micali noted the proposal to replace two dump trucks (\$150,000 each). He stated the desire for dump trucks to be on a replacement schedule to avoid the need to purchase 6-7 at a time. The intent is to replace 2 per year. Town Manager Cabanel stated it to be her policy that expenditures of this magnitude are items she would like to bring before the Council again when the Town goes out to bid. She suggested the cost identified for the design work for the South Fire Station may be on the high side. As an example, the Town spent between \$20,000 and \$25,000 for the design for the Highway Garage. Before entering that phase, she intends to bring the project back before the Council. She also intends to bring the bids for the bridges back before the Council to provide an update.

No one from the public addressed the Council.

Vice Chairman Yakuboff closed the Public Hearing at 6:58 p.m.

MOTION made by Councilor Koenig and seconded by Councilor Harrington to move the Municipal Operating Budget to the Warrant as presented. MOTION CARRIED 6/0/0

Collective Bargaining Agreement(s) - None

Proposed Issuance of Debt Highway Garage \$3,300,000

Vice Chairman Yakuboff opened the Public Hearing at 7:00 p.m.

Director Micali provided a PowerPoint presentation (copy attached). Identified within the presentation were current issues at the Highway Garage. Listed were code issues such as the air handling system, electrical, not meeting BOCA/Fire codes, etc., safety/OSHA issues such as inadequate bathrooms, cramped work areas, welding bay open to the public, etc., and other issues such as the age of the building, its design having been to serve the population that existed in the mid '70s, etc.

There are two outstanding bonds; Greens Pond Land Acquisition Bond (coming due in 2018) and the Drainage Bond (coming due in 2023). Merrimack is significantly debt free because of the use of Capital Reserve Funds to pay for capital needs. Larger projects such as the proposed Highway Garage at an estimated cost of \$3.3 million should be financed through a bond. Interest rates are low and the timing is favorable given the current outstanding debt. The Town has been spending approximately \$.16 on the tax rate in bonded debt. If the bond issuance is approved, the first year payment would include half a year of interest (\$85,333 or \$.03 on the tax rate) (bonding in July will result in interest due in January). A full principal and interest payment would be due the following fiscal year (\$296,625 or \$.10 on the tax rate). In 2019 one of the existing bonds will be retired. In 2023 another bond will be retired. At that time, the tax rate calculation on bonds decreases significantly (from \$.16 in 2014 to \$.08 in 2024).

Town Manager Cabanel stated it is important for the public to understand the time commitment that has been put into the issue of the Highway Garage. The issue has been discussed at two separate Council Retreats. The Council visited the garage and viewed each structure and operation. She spoke of how valiantly Public Works personnel have patched that facility together over the years to get by with what they have.

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The Council formed a committee, which included Councilor Yakuboff as Chairman and Councilor Dwyer as Vice Chairman. Town Manager Cabanel and Finance Director Micali sat on the committee as did two members of the public, Adam Jacobs, Operations Manager, Rick Seymour, Director of Public Works, and three employees who work in the facility.

Vice Chairman Yakuboff noted he and Councilor Dwyer have produced two television segments detailing the work that was done by the Committee and the Council and how the proposal was reached. Another segment was prepared by him and Director Micali highlighting the debt structure and cost analysis of the project. He suggested members of the public take an opportunity to review the segments. He also stated a willingness on his and Councilor Dwyer's part to provide tours of the facility to anyone interested. Councilor Mahon suggested a date be scheduled to conduct a tour for those who may be interested.

Councilor Mahon stated there is no OSHA coverage in New Hampshire. Therefore, the notation should not be included in the presentation. Councilor Harrington questioned whether a link could be posted to the Town's website directing citizens to the segments (YouTube). Director Micali stated that would be done.

Councilor Koenig remarked since the time he joined the Board of Selectmen discussions have taken place around how to resolve the issues at the Highway Garage. This project had the potential to become much larger than what is being proposed. What the Committee brought forward is a project that is very austere. The project includes necessary components, reuses what can be re-used, etc. The project does a tremendous job of using the materials and structures already in place and expanding them to fit today's needs. He stated it to be an opportunity to move forward at a minimal cost, and put together a facility that will support Merrimack. He urged residents to come out and vote for the bond. He requested residents having questions/concerns make them known. Councilor Dwyer added those the Council would like to hear from are those that are not convinced of the need. He pleaded with those residents to participate in a tour of the facility.

Director Micali stated the proposal includes renovations to the existing building and construction of a new building for an anticipated cost of \$3.3 million financed through a 25-year bond. Town Manager Cabanel commented there is no intent to increase the number of employees within the facility. She remarked she believes one of the greatest exercises the architect/engineer did was go to each of the employees and asked what was needed for his/her space/area. They were very modest in their requests asking for less than industry standards.

No one from the public addressed the Council.

Vice Chairman Yakuboff closed the Public Hearing at 7:19 p.m.

MOTION made by Councilor Boyd and seconded by Councilor Dwyer that the proposed Highway Garage and issuance of debt in the amount of Three Million Three Hundred Thousand Dollars (\$3,300,000) be moved to the Town Warrant

ON THE QUESTION

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Councilor Boyd remarked the facts have been presented to support the need for the new facility, and based on comments made by his colleagues, he is supportive of the project. When asked, Director Micali stated the debt service payment is identified within the Warrant Article.

MOTION CARRIED 6-0-0

Proposed New Capital Reserve Fund - Geographic Information System

Vice Chairman Yakuboff opened the Public Hearing at 7:20 p.m.

Director Micali stated the proposal to be for a new Capital Reserve Fund for a Geographic Information System. The system is utilized throughout all Town functions, e.g., layers are used for sewer, highway, drainage, water, etc. Flyovers were done in 2005. Aerial photography is nearly 10 years old. The desire is for additional flyovers and upgrades to both system software and hardware. Project cost is believed to be in the \$160,000 range. The idea is to save over time to cover the cost.

Tim Thompson, Director, Community Development Division, informed the Council the issue is that base data is nearing the end of its useful life. A new flyover with new digital ortho images would allow for the update of the land use layer, topography layer, water features/hydrography; all of the basic layers that form the backbone of the GIS system. Because it is a process that has to be undertaken every few years to ensure the reliability of the system, it is believed most practical to be done as a capital item rather than placing the associated costs into the operating budget every 4-5 years. The estimated cost for the flyover and conversion of that data into the GIS is \$160,000. Director Micali noted the proposal to be for an initial \$10,000 allocation to the capital reserve fund.

Councilor Dwyer remarked as a fairly novice person to the computer world he has enjoyed Goggle Maps and the technology that exists currently. He questioned whether the private sector is already upgrading that system consistently. If only allocating \$10,000 it could be a decade before being fully funded. Town Manager Cabanel stated her anticipation greater levels of funding would be proposed in future years. She remarked the most important things are those that are specific to Merrimack. As an example the different layers allow for a variety of information to be retrieved, e.g., where streetlights are located, where manholes are located, where sewer lines are located, etc. Councilor Dwyer remarked those locations are already known. Town Manager Cabanel remarked if a developer were to come in looking to discover certain information about a particular piece of property, through the GIS system, all information or particular information of interest could be viewed at a glance.

Councilor Dwyer questioned what the anticipated timeframe would be before the fund is at a level that could support the upgrades (\$160,000). Town Manager Cabanel stated her expectation to be around 4 years. Director Micali remarked when paving projects are performed the Public Works Department enters information learned into the GIS, e.g., drainage issues to be addressed, etc. Other information such as easements and right-of-ways is also included in the system. Having that type of information can represent a cost savings in not having to hire a surveyor to survey the land, review old Deeds, etc. Residents can utilize the system to view property, identify property lines abutters, etc. without having to go to Town Hall to gather than information.

Director Thompson noted imagery that can be obtained through Google, Bing, etc. is great for the level it is, but the digital ortho photos used for a GIS system differ in that the resolution gets down to about

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1 pixel being a meter on the ground. That data can then be converted into data layers that you can't do with Google Earth or the Bing images that you get on a commercially available basis.

Councilor Mahon questioned the level of inaccuracy that has crept into the system. Director Thompson responded for most imagery used for public notices for issues that come before the Planning and Zoning Boards, he is using Google maps because the imagery the Town has in the GIS is so far out of date it does not accurately reflect ground conditions today. Councilor Mahon remarked that is the same issue the Conservation Commission has been struggling with for the past few years, e.g., accuracy in locations, etc. He reminded the Council Tim Tenhave, Chairman, Conservation Commission, spoke of the difficulties experienced with the system during his annual report to the Council. Director Thompson stated it to be a tool that can be utilized across multiple departments, boards, and committees that is grossly underutilized based on the data available.

Councilor Dwyer stated he would support the project. He remarked he may look for the Council to save for the cost of the upgrades, etc. over a 6+ year timeframe. Councilor Harrington remarked if technology continues the way it is heading it won't be \$160,000 ten years from now. It would likely be much less. Director Thompson remarked if that is the case the funds could be used for system upgrades, etc.

No one from the public addressed the Council.

Vice Chairman Yakuboff closed the Public Hearing at 7:34 p.m.

MOTION made by Councilor Koenig and seconded by Councilor Mahon to move the new Capital Reserve Fund for the Geographic Information System to the Warrant

ON THE QUESTION

Councilor Koenig commented working on the Planning Board for as many years as he has, seeing how the GIS system assists developers and the Town, and knowing it is used by all of the different departments in Town, he adamantly believes this system is important for the Town. Looking at the dollar figure in one point in time is probably not an adequate look at the issues, and that the value we get out of the system is well in excess of the amount it will cost to keep it maintained.

MOTION CARRIED 6-0-0

Petitioned Bonds - None

Other Petitioned Warrant Articles

Vice Chairman Yakuboff opened the Public Hearing at 7:35 p.m.

Director Micali informed the Council of a Petitioned Warrant Article in the sum of \$5,000 to cover education costs for NEPBA Local 112. NEPBA Local 112 covers union dispatchers and office secretaries at the Police Department. Town Manager Cabanel stated the Town signed a three-year contract with the dispatchers and secretaries at the Police Department. One of the items they wished to have in their contract was a provision for educational reimbursement. Contract language states up to the amount appropriated. No monies have been appropriated. It was necessary to list all cost items for

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the three years for the contract, which did not include any funds associated with the educational component. According to Attorney Upton, even if the Article were to pass, it is not enforceable. Councilor Harrington questioned whether it is \$5,000 over the year of the contract. Town Manager Cabanel stated there was no amount associated with it. The request is for \$5,000 for this fiscal year.

Councilor Dwyer questioned why the Council would support it if not enforceable. Director Micali stated the Council could make its recommendation. By law, Petitioned Warrant Articles need to be brought forward to deliberative session. As the governing body, the Council has to move it forward.

Councilor Boyd questioned whether there would be language included informing the citizenry the Article is unenforceable. Director Micali stated that would not appear on the Warrant. There could be language included in the voter's guide. Councilor Harrington questioned language in other contracts relative to education. Town Manager Cabanel responded the language from other contracts was used and varies from contract to contract. Director Micali stated IAFF, Firefighters, has \$12,000 available for education for union members (collectively), AFSCME 3657, Police and Fire Supervisors, has \$1,000 per member. NEBBA 12, Police Officers, has \$30,000. Teamsters, PWD Foremen, and AFSCME 2986 have no available funds, and non-union has an allocation of \$7,500.

No one from the public addressed the Council.

Vice Chairman Yakuboff closed the Public Hearing at 7:41 p.m.

MOTION made by Councilor Boyd and seconded by Councilor Harrington that the Petitioned Warrant Article from NEPBA Local 112 be brought forward to the Warrant Article. **MOTION CARRIED 5-1-0** Councilor Dwyer voted in Opposition

Legislative Updates from State Representatives - None

Town Manager's Report - None

Consent Agenda - None

Old Business

1. Second Hand Shop Trailer Update

Submitted by Public Works Director Rick Seymour

The Town Council to have a follow up discussion regarding the status of the Second Hand Shop Trailer after the 120 day monitoring period per the motion made at the September 26, 2013 Town Council meeting.

Town Manager Cabanel informed the Council Rick Seymour, Director, Public Works Department, was unable to be in attendance; however, provided a communication in advance of the meeting in response to the Council's request for an update to be provided at the 120-day point. As stated in his communication, the Swap Shop has to be cleaned and clutter eliminated 3-4 times per week, however, has been very effective. Positive feedback has been received from residents. His recommendation is for the Council to allow the Solid Waste staff to continue to operate the Swap Shop indefinitely. Town Manager Cabanel stated her agreement.

MOTION made by Councilor Boyd and seconded by Councilor Harrington that the Town Council allow the Solid Waste staff to continue to operate the new Swap shop indefinitely, and to report to the Town Manager if there are any problems in the future

ON THE QUESTION

Councilor Boyd remarked he was skeptical of this, but having visited the Transfer Station he has viewed it working. He commended Director Seymour and his staff for their efforts to make this work. He credited Councilor Dwyer for taking the initial initiative on the project. Councilor Dwyer thanked Councilor Koenig who suggested allowing for the initial 120 days.

MOTION CARRIED 5-1-0

Councilor Mahon voted in Opposition

New Business

There being no objection, the Council went out of the regular order of business to take Items 4 and 5.

4. Review of the 2014-2015 Default Budget

Submitted by Town Manager Eileen Cabanel and Finance Director Paul T. Micali

The Town Council will review the 2014-2015 Default Budget.

Director Micali stated when calculating the default budget one needs to take the operating budget into account from the last prior year (\$29,007,126). With that there are certain things State Statute allow to be added and subtracted; union contracts passed in prior years and associated benefit costs (\$205,339 added), one time capital purchases and the delta of any debt service between the years (\$15,067 subtracted for decreased debt service cost and \$1,305,000 for Capital Expenditures fully offset by revenue). Total appropriation less capital expenditures and bonds is \$27,892,458. That would be the default budget that goes on the Warrant Article.

As a way to provide an apples-to-apples comparison for Warrant Article 3, if you remove from the proposed operating budget (\$31,979,257) the total capital expenditures (\$3,711,000), your total proposed budget is \$28,268,257 or an increase of \$375,799 over the default budget. Going further, if from the \$375,799 you were to remove all infrastructure and capital increases identified within the budget, e.g., capital fund increases, gas pumps, road paving, etc., the total increase in the operating budget above the default budget is \$48,799.

Councilor Harrington questioned, if the default budget were chosen, if all other expenditures, e.g., capital reserve fund, etc. would be expended. Director Micali stated the capital reserve funds could still be expended because the Town Council is agent to expend on all capital reserve funds and expendable capital reserve funds. If a default budget were enacted, Director Micali would come back before the Council for the setting of the new budget amounts for each department.

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MOTION made by Councilor Boyd and seconded by Councilor Harrington to move the 2014/2015 default budget in the amount of Twenty Seven Million Eight Hundred Ninety Two Thousand Four Hundred Fifty Eight Dollars (\$27,892,458) to the Warrant. MOTION CARRIED 6-0-0

5. Review of 2014 Town Warrant

Submitted by Finance Director Paul T. Micali

The Town Council to review and make recommendations on each article of the 2014 Town Warrant.

Article 1

To choose all necessary Town officers for the ensuing year.

Article 2

Shall the Town vote to raise and appropriate the sum of \$3,300,000 for Highway Garage upgrades and installation, and to authorize the issuance of not more than \$3,300,000 of bonds or notes in accordance with the provisions of the Municipal Finance Act (RSA 33) and to authorize the Town Council to issue and negotiate such bonds or notes and to determine the rate of interest thereon, and to take any other action or to pass any other measure relative to said purpose and financing; and to further authorize the Town Council to apply for and accept any federal, state, or private grants that may be made available; to authorize the Town Council to issue, negotiate, sell, and deliver said bonds and notes and to determine the rate of interest, the maturity, and other terms pertaining thereto; and to authorize the Town Council to take any other action or to pass any other measure relative to said purpose and financing; and to further raise and appropriate the sum of \$90,333 for the purpose of 2014-15 interest on said bonds or serial notes?

MOTION made by Councilor Mahon and seconded by Councilor Boyd to recommend Article 2 as stated. MOTION CARRIED 6-0-0

Article 3

Shall the Town vote to raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant or as amended by vote of the first session, for the purposes set forth therein, totaling \$31,979,257. Should this article be defeated, the default budget shall be \$27,892,458, which is the same as last year, with certain adjustments required by previous action of the Town or by law; or the Town Council may hold one (1) special meeting, in accordance with RSA 40:13, X and XVI, to take up the issue of a revised operating budget only.

MOTION made by Councilor Mahon and seconded by Councilor Dwyer to recommend Article 3 as stated. MOTION CARRIED 6-0-0

Article 4

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Shall the Town vote: to establish, in accordance with RSA 35, a Geographic Information System (GIS) Capital Reserve Fund for capital expenditures relating to the purchase and installment of hardware and software as well as the upgrade obtaining digital aerial orthophotography and planimetric mapping of the Town's land area and creation of GIS data layers (including but not limited to edge-of-roads, buildings, topography, hydrography, etc.) , and improvement of GIS System, including related equipment, and infrastructure; to raise and appropriate the sum of \$10,000 to be placed in said fund; and to designate the Town Council as agents to expend? This is a Special Warrant Article per RSA 32:3, VI.

MOTION made by Councilor Boyd and seconded by Councilor Mahon to recommend Article 4 as stated. MOTION CARRIED 6-0-0

Director Micali stated Special Warrant Articles are defined in RSA 32:3, VI as appropriations; in Petition Warrant Articles, appropriations raised by bonds or notes, appropriations raised by separate funds created pursuant to law such as capital reserve funds and trust funds, and appropriations designated on a Warrant as a special article or as a non-lapsing, non-transferable article. He noted Article 4 would fall under the category of appropriations to a separate fund created pursuant to law such as capital reserve funds or trust funds.

Article 5

Shall the Town vote to raise and appropriate the sum of \$5,000 for reimbursement education or training for NEPBA Local 112, Dispatchers and Support Staff, in accordance with Article XIII of the NEPBA Local 112 contract, which reads:

“The Town shall pay 100% of the cost of any employee education or training that is required by the Town to assist him/her in maintaining his/her minimum job, or in adequately performing the tasks to which he/she is regularly assigned.

The Town shall reimburse full-time employees for 100% of the tuition relating to college courses so long as: a certificate of completion, with a grade of C, or better, is presented to the Human Resources Coordinator, and is related to the employee's job.”

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to not recommend Article 5

ON THE QUESTION

Councilor Mahon stated a concern that the motion be made in such a way that the Council's recommendation is as clear as possible, e.g., that the vote count would likely be what the general public would look to.

MOTION WITHDRAWN

MOTION made by Councilor Boyd and seconded by Councilor Dwyer to recommend Article 5 as stated

ON THE QUESTION

Councilor Dwyer stated he would be voting against the motion as he does not believe it is worthy to be on a Ballot when not enforceable. Whether for giving employees a financial benefit for extra schooling, given they are union employees, it is the type of item that is negotiated.

Councilor Mahon stated the law requires it to be placed on the Ballot, and, as a cost item, for the Council to make a recommendation. Councilor Harrington stated she would symbolically agree that they should have negotiated. Councilor Boyd remarked as part of the Collective Bargaining Agreement, their attorney should have reviewed it the first time around before signing. Based on that, he will be voting in opposition. Councilor Mahon remarked there is a zipper clause in the contract that said this represents the sum total of all items discussed and agreed to in the course of negotiation of the contract. That is probably part of the issue as to why it is deemed not enforceable.

Town Manager Cabanel remarked language is in their contract. It says they can have this educational benefit up to the amount that is appropriated. Every time a contract comes before the Council that has several years included in the contract the Council has to include the cost items. The union wanted it to be a placeholder and knew the amount was not going to be in the budget for the three years. They have chosen to bring it forward anyway. It is basically a placeholder for the future. They wanted to have the opportunity to put some funding in there if it was felt there would be a course of study that would be appropriate for their union.

MOTION FAILED 1-5-0

Councilors Boyd, Dwyer, Harrington, Koenig, and Mahon voted in Opposition

There being no objection the Council recessed at 8:14 p.m.

The Council reconvened at 8:19 p.m.

1. Donation Acceptance for the Merrimack Police Department

Submitted by Captain Dudash

The Town Council to consider the acceptance of a \$2,000 donation from Digital Federal Credit Union to the Merrimack Police Department to be used to offset expenses for the PACT Program, pursuant to Charter Article 8-15 and RSA 31:95-b.

Captain Dudash informed the Council of the Police Department's receipt of a check from the Digital Federal Credit Union with a letter stating their support of all the department does for kids. Captain Dudash spoke of the many programs the department puts on. He stated he and the Chief are of the belief the donation would be best earmarked for the PACT Program; a program that has been in effect since 2009 and is a hybrid of the DARE Program. The program runs 1 day a week for 5th grade students. In this program the officer talks with the students about making the right decisions such as staying away from drugs, alcohol, tobacco products, and bullying. The donation would be utilized for supplies, e.g., certificates for graduating the program on a yearly basis, awards, books needed for the program, etc.

Councilor Boyd stated his support of accepting the donation. He spoke of Merrimack's honor of being the 19th safest community in the United States, and remarked this is the type of programs the Police Department is involved in to continually maintain their philosophy of community policing and the

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reason why we received those accolades. He expressed his gratitude to DCU for recognizing the good work of the department.

MOTION made by Councilor Mahon and seconded by Councilor Dwyer to accept the Two Thousand Dollar (\$2,000) donation from Digital Federal Credit Union to the Merrimack Police Department to be used to offset expenses for the PACT Program, pursuant to Charter Article 8-15 ad RSA 31:95-b. MOTION CARRIED 6-0-0

2. Playing Field Shortage in Merrimack

Submitted by Brad Knight

To discuss field shortage and possible solution.

Mr. Brad Knight, Amherst, NH, stated his company to be Knight Custom Homes, he has built a number of homes in Town, owns a number of properties in Town, and has been paying taxes in Merrimack for 28 years. Mr. Knight informed the Council of a property in Amherst located on Stearns Road just off of 101 and 101A (60 acres of which 50 is open fields). The property has about 3,500' of frontage on the Souhegan River. They have a large CSA and organic vegetable operation and irrigate the playing fields and the gardens. There is a gravel access road and parking for 500 cars. The property was owned by Tuckahoe Turf in the '70s, was then purchased by Ben Brewster who obtained approvals for a sports complex. He ran it for a few years as a practice facility. He also held a number of tournaments including the Nashua World Cup. Mr. Knight purchased the property 3½ years ago. The Amherst Country Club was also bidding for the property to expand operations.

He remarked he has always felt the property was ideal for playing fields, and being a 50+ year resident of this area decided to buy the property to ensure kids would have a place to play sports. He has built 8 full-sized playing fields, which are 320' x 210' and has been mowing them for the last 3 years. The sod is very healthy and thick. There are no chemicals or pesticides used on the property. The abutters to the property were able to get a Petition Article passed after one of the previous owners lost his approvals. That ended any chance of new playing fields ever being built in Amherst again. This zoning has so many limitations and restrictions, only a town entity can use the playing fields. The last two times Amherst has tried to buy land, including a petition to buy this particular parcel, the voters have turned it down. He went through a 3 year approval process to make these fields available. The Planning and Zoning Boards both commented they wanted to approve his plan and knew the town needed more space, but the new abutter zoning had their hands tied.

He offered the fields to the Selectmen, but they only wanted to buy it. The voters have turned down every land purchase for sports and recreation in the last 25 years so the hope of purchase is not possible. He submitted a petition for zoning changes to amend the regulations to once again allow for playing fields. The Planning Board has voted in support of it with a 4/3 vote. The voters will be voting on this in March. Upon reviewing the States RSAs last month, he discovered we can in fact get kids playing on these fields again. RSA 674.54 allows any town to utilize land as they see fit without Planning or Zoning Board approval regardless of where it is located. A good example is the Town of Milford who owns property in Amherst where they have wells that provide Amherst water for Milford residents.

The plan would be to have Merrimack lease the playing fields and to have their teams play there. The immediate reaction would be we don't want to step on the toes of Amherst, but this is not a reasonable

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concern. The Amherst Planning and Zoning Board and Parks & Recreation Department want to see kids on these fields as they have in the past. All we need is a town to lease the property and then the kids can start playing.

The proposal is to get the kids playing on the fields this spring. He has completed all necessary steps to accomplish this goal; surveying, mapping, engineering, and building of the fields is done. It is only necessary to put in a Petition at no cost to the Town of Merrimack, hold a Public Hearing, and then 30 days later the kids can start playing. Probably the single biggest concern and the reason voters have been very slow to approve spending is obviously the cost associated with building these type of fields. He proposed renting the fields to the Town of Merrimack for the sum of \$1.00. This would not pay for taxes, maintenance or mortgage, but funds could be generated through limited usage fees, tournaments, etc. A good will gesture would be to allow Amherst lacrosse or soccer to play on these fields.

Councilor Boyd stated it to be important for the community to know some additional facts behind this particular parcel of land. The same presentation has been made to the Board of Selectmen in Milford, the Town of Bedford, and the City of Nashua. He commented it is difficult for him to think he was before the Council in good faith offering the fields. He noted e-mail correspondence included in the Council's packet to the President of the Merrimack Youth Association (MYA) who basically responded she was comfortable with the level of fields in this community. Councilor Boyd noted there are two warrant articles and significant community opposition to the project at this location. Supreme Court case 97-912 outlines the problems Mr. Brewster had with this parcel and why a site plan was revoked. He remarked Mr. Knight was looking to use Merrimack as leverage and he does not subscribe to that, and would not support it.

MOTION made by Councilor Boyd and seconded by Councilor Dwyer that the Town Council assert that the Town of Merrimack has no interest in leasing or otherwise utilizing ballfields in the Town of Amherst

ON THE QUESTION

Mr. Knight responded he has presented to other towns as his focus is to get kids out on these fields. As a long-time resident he would love to have Merrimack kids out there. He remarked a lot of towns cannot handle the concept of renting or using land in another town. He commented it almost sounds as though it is being implied that he is being underhanded by presenting to multiple communities. Bedford and Nashua have said they are not interested because of proximity. The thought was if a town decided to use the fields it won't really matter what happens with the vote. They can start using the fields and a long-term agreement could be reached with that town and get kids out there playing.

Councilor Boyd responded he is a firm believer in a community's right to self-govern. Based on the research he has done, the Town of Amherst has spoken, and he feels if he is truly sincere about wanting to use this particular piece of property for fields whether it be for another municipality or the Town of Amherst that he go back and work with the opposition to the project and figure out a way to make it work. The Town of Merrimack shares a border with the Town of Amherst, has signed a grant application with the Town of Amherst that will help them with some of their planning needs, and the Conservation Commission is working with the Amherst Conservation Commission to provide cross-jurisdictional work with regard to trails around South Grater Road. He stated he is very reluctant to

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entertain the thought of entering into any type of agreement that impedes the Town of Amherst and the community to be able to govern itself.

Mr. Knight commented the one point the Council may not be aware of is that this was offered to the Selectmen same as it is being offered to Merrimack, and their only interest was to purchase the property. There is no interest in selling the property.

Vice Chairman Yakuboff stated his impression the proposal is an end-run around Amherst to get Merrimack involved. He is of the opinion Merrimack is not interested. Councilor Dwyer stated his impression Amherst has spoken through the ballot box and their governing body and both have said no. He is uncomfortable trying to force the opposite of what their wishes are in their own town. He stated his greatest concern to be that the MYA, the largest group of youth sports in Town, has stated they are not interested in playing there. If our largest group in Town is not interested there is no interest from Merrimack.

Mr. Knight thanked the Council for its time.

MOTION CARRIED 6-0-0

3. O’Gara Drive Tennis Courts

Submitted by Town Council Chairman Finlay Rothhaus

The Town Council to discuss the condition of the O’Gara Drive tennis courts and the Town’s agreement.

Town Manager Cabanel stated it appears the request the School Board made of their attorney is not the request they are making to the Council. The request to the attorney was for counsel to devise strategies for the School District to terminate the Easement granted to the Town. The letter, provided in advance of the meeting, goes on to state counsel is of the understanding the School Board would like to take over the tennis courts and maintain them. The question from the School Board is “By consensus, the School Board requested that I share this legal opinion with the Town Council, request remediation of the tennis courts by the Council and a schedule for bringing the courts back into compliance.”

Councilor Mahon stated that could not occur this year as the budget cycle is complete. Councilor Dwyer stated, with no disrespect to the School Board as he respects every member on that board, he questions the level of importance given the request was made and granted to place the item on the agenda; however, no one is in attendance to speak to the issue. He commented the tennis courts have been shut down for several years and the agreement was put in place over 30 years ago when the Town received grant funding to allow for the construction of the courts. Unfortunately the courts were placed on rock ledge, which turned out to be a horrible location. Almost immediately the ledge started shifting and buckling.

Town Manager Cabanel has in her possession a letter dated in 1986, which states “There is major structural fault in the asphalt base that is situated on the south service line and creates a serious player ability problem. This fault has existed since the courts were first built.” Through the School Board, they have presented what they would like to see done, which is invest funds into the present tennis courts.

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Councilor Dwyer stated the most startling thing is not the price of the estimates (\$183,000) to replace and rebuilt the courts, but the fact there would only be a three-year warranty. He stated his opinion it would be a gross negligence to spend that kind of money to rebuild the tennis courts in this location. He stated he would never support spending a single dime in that location. If the School Board needs formal notification of relinquishing control over the courts, he would support that. He reiterated in order to have a discussion both entities need to be represented. He found it troublesome instead of engaging in a discussion, the decision was made to contact an attorney, at a cost, to determine a resolution. He stated the School Board wishes for the Town Council to spend close to \$200,000 to build them tennis courts, and as far as he is aware, have never even opened up the discussion of we want you to spend the money, but we will locate them here instead. That is a different discussion he would be willing to have.

Councilor Boyd noted the second paragraph on page three of the legal opinion refers to Section 6(f) of the LWCF Act by which the grant monies were allocated. It states "No property acquired or developed with assistance under this [the LWCF Act] shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value...." He stated his interpretation to be the grant money was provided and has been used to create a public outdoor resource. As much as he agrees with comments made that the property is probably ill-suited, it is not as if the grant funds could be returned, and the Town is obligated, as a condition of that grant, to provide some type of public outdoor space.

Additional language on page four states "While this does not give the District the ability to terminate the Agreement or any of the easements granted by the Agreement, it does provide some leverage for negotiations with the Town. In order to bring the park into compliance with the Agreement and the LWCF Act, the tennis courts and other facilities located on the land will need to be brought into a better state of repair." Additionally it states "I suspect that the Town would resist any obligation to provide substitute facilities."

Councilor Boyd remarked if the condition of the grant is that we have to maintain an outdoor facility and we cannot have it at this particular location, in order to stay in compliance with the grant, we have to look to another location to provide whatever is suitable to comply with the requirements of the grant that was applied for back in 1974.

Town Manager Cabanel stated language within a letter from the Division of Parks & Recreation within the State Department of Resources and Economic Development (DRED), who administers these grants, states "A perpetual recreation use commitment, which can only be changed by prior and Federal approval such as conversion and that that approval must include adequate substitution of land or facilities." It does not say it has to be in-kind facilities. She stated the representative from the Division of Parks & Recreation informed her that his colleague prior to him had suggested the Town might put up volleyball courts. It is a recreational use, does not have to be the same dollar value, but the same recreational value. Councilor Dwyer stated he would challenge the silliness of laws and that he will not be a slave to it. He will not participate in the Federal Government's language back in 1973 that said we would provide this in perpetuity.

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Councilor Mahon commented if going to spend that amount of funds he would rather it be for something that would get more use than the tennis courts have gotten. He spoke of a request in 1986 for re-coating of the tennis courts because of the problem that existed. The question then was why. Next was a request for the lights. Each time it was because there was Land & Water Conservation Fund money available for that. That is the exact reason the Parks & Recreation Director, at the time, gave to the Budget Committee. That has obligated us to keep the lights on until 10:00 p.m. during the summer when there is nobody there. The Board of Selectmen in 1973 said they were willing to take the money under those conditions, and so they have obligated that.

Councilor Mahon stated he is not interested in throwing more money after a problem that is very difficult to resolve. This was discussed 2-3 years ago with the School Board when talking about the joint meeting that occurred in 2011. Councilor Dwyer reiterated if the School Board wants the land to do something with and need some kind of contractual agreement with the Council he is all for that. If they wish to discuss a future site to continue the spirit of the grant again that is another discussion, and one he is very willing to have. But to ask the Council to invest a quarter of a million dollars (2012 was the date of the \$183,000 quote), then he would think even the School Board would agree that Town funds in that amount invested in that site for tennis courts would be a bad decision.

Vice Chairman Yakuboff remarked the Town Manager is looking to work through the conversion. It could be something as easy as putting in a nice volleyball court at Watson Park and being able to use it during the summer and then in the winter put up a removable ice skating rink. Town Manager Cabanel stated there to be a few complexities involved. First she would need the Council to provide her the authority to begin the process of the conversion paperwork, which has to be approved by the State and the Federal Government. It would need to be specific on what the conversion was for and authorized by the Council. She stated a desire to gain additional information from the School Board because if their desire is to release the lease on the property there is a good deal more included than the tennis courts; skateboard park, basketball courts, etc. The lease is for the entire area.

Councilor Dwyer stated a desire for the opportunity for the Council to have a discussion with the School Board or their representative in the hope of coming to a mutually agreeable solution. Director Micali informed the Board the School Board Chairman had planned on attending the last meeting. He is unsure why he was unable to be in attendance this evening and suggested the weather may have played a role.

MOTION made by Councilor Boyd and seconded by Councilor Mahon to table the item until the Council's March 13, 2014 meeting. MOTION CARRIED 6-0-0

Minutes

Approve the minutes from the following Town Council meetings: January 13, 2014, January 16, 2014, January 20, 2014, and January 23, 2014.

MOTION made by Councilor Boyd and seconded by Councilor Harrington to approve the minutes of the January 13, 2014 Town Council Meeting as presented. MOTION CARRIED 6-0-0

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MOTION made by Councilor Boyd and seconded by Councilor Harrington to approve the minutes of the January 16, 2014 Town Council Meeting as presented. MOTION CARRIED 6-0-0

MOTION made by Councilor Yakuboff and seconded by Councilor Boyd to approve the minutes of the January 20, 2014 Town Council Meeting as presented. MOTION CARRIED 6-0-0

MOTION made by Councilor Mahon and seconded by Councilor Harrington to approve the minutes of the January 23, 2014 Town Council Meeting as presented. MOTION CARRIED 6-0-0

Comments from the Press - None

Comments from the Public - None

Comments from the Council

Councilor Boyd informed the Council at the last meeting of the Economic Development Citizen Advisory Committee the Community Development Director for Nashua, Tom Galligani and George Durante, the Program Coordinator for the Greater Nashua Revolving Loan Fund, provided a presentation regarding the purpose of the Revolving Loan Fund. They went out of their way to say that \$277,000 is still available. They are actively looking for applicable companies that may be seeking some type of bridge financing. They also thanked the Town in general for its support of sponsoring the grant as it relates to Resonetics back in 2012. They stated that to have been a very good gesture made by the Town of Merrimack and they were pleased with the Council's sponsorship of that grant.

Vice Chairman Yakuboff cautioned residents to be mindful of the amount of snow on the sides of roads and remain watchful for both children playing and plow trucks in the area. He expressed his gratitude to the Public Works Department employees putting in extra hours to keep the roads clear.

MOTION made by Councilor Mahon and seconded by Councilor Harrington to adjourn the meeting. MOTION CARRIED 6-0-0

The February 18, 2014 meeting of the Town Council was adjourned at 8:59 p.m.

Submitted by Dawn MacMillan